IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 1439 OF 2007

Smt. M. Charumati, w/o M.N.V.S.)
Narayan Murthy, residing at Flat No. 106,)
Block No. C-5, BOI Officers' Quarters, Sector 13,)
Nerul, Navi Mumbai-400 706)..Petitioner

Versus

1. Bank of India, through its)
Chairman and Managing Director,)
Head Office, 14th floor, Express Tower,)
Nariman Point, Mumbai-400 021.)

2. The Chief Manager, Bank of India,)
Inspection and Audit Department,)
Head Office, CBD, Belapur.)

3. Bank of India, Inspection and Audit Department,)
Head Office, CBD, Belapur, Navi Mumbai.)..Respondents

Mr. Mihir Desai for the petitioner.

Ms. Sarika Deshpande, instructed by M/s. Haresh Mehta & Company, for the respondents.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : July 27, 2007
Judgment delivered on: August 23, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

The petitioner applied for the post of Clerk-cum-Typist with the Bank of India, respondent in this petition. She was appointed on 16th July, 1974, whereafter she was promoted to the Officers' grade on 15th November, 1978. Her initial appointment was against a post which was reserved for Scheduled Tribe candidates. She submitted her caste certificate dated 19th August, 1972 issued by the Tahsildar, Tenali. In the year 1979, proceedings were started against the petitioner in relation to the caste certificate and her status. A show cause notice was issued to her on 25th July, 1979, wherein it was recorded that the petitioner had shown herself belonging to Jakkula community which was neither a Scheduled Caste nor a Scheduled Tribe. After her promotion, she submitted a reply to the show cause on 2nd August, 1979 stating that there was no mala fide intention in submitting the caste certificate nor there was a misrepresentation of facts and requested that no action be taken against her. According to the petitioner, on 17th March, 1983, the matter was treated as closed and her promotion was regularised and she was confirmed on 18th May, 1980. Thereafter she continued to work in that post. Vide letter dated 1st February, 2002, the Bank required the Officers under whom the petitioner was working to obtain her caste certificate for the purpose of verification by the District Magistrate, Guntur, on an urgent basis. Vide letter dated 14th February,

2002, she was asked to submit the original caste certificate. She did not submit any certificate but informed the Bank, vide letter dated 7th March, 2002, that the matter had already been closed and the Bank had no authority to reopen the issue and also stated that the original certificate was lost during transfer from Hyderabad to Vishakhpatnam. Copies of these letters are at Exhibits-G and H to the writ petition.

2. The petitioner first filed a writ petition, being Civil Writ Petition No. 7162 of 2002, in the High Court at Andhra Pradesh seeking the relief of restraining the respondents from initiating any proceedings against her. Initially, interim order was granted, but vide order dated 29th January, 2007, the writ petition was dismissed by the Court. In that writ petition, the petitioner had raised the ground that the respondents had closed the issue and they could not continue with the issue or reopen the same any further. The Court, while rejecting the said show cause notice, held as under.

> 'It is not in dispute that petitioner was appointed under the quota reserved for scheduled tribes as has been claimed by her. When she was promoted in the year 1978, respondents declined to consider her case in the reserved category. When petitioner submitted representation dated 02.08.1979, respondents issued proceedings dated 17-3-1983 regularizing her promotion to Officer's cadre with effect from 15.11.1978. In the year 2002, when the

> matter came under scrutiny by the District Magistrate, Guntur, he requisitioned the respondent Bank of the original certificate produced by the petitioner, on the basis of which she secured appointment in the respondent Bank in the quota reserved for Scheduled Tribes. As much as the petitioner had only submitted a copy of the caste certificate at the time of her appointment, respondent bank has issued notice dated 14.2.2002 asking her to produce the original caste certificate.
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> 6. When the caste status of an individual is to be scrutinized by the competent authority under the provisions of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificates Act, 1973, it is always open for the employer to issue instructions to the employee to produce his/her original caste certificate on the basis of which he/she claimed reservation and appointed. In the case on hand, petitioner claims that she lost the original caste certificate. If that is the case, she could have represented to the authorities concerned, for necessary steps being taken, but the same is not a ground to issue directions by way of mandamus, at this stage.
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> 7. The writ petition is devoid of merits and is accordingly dismissed. No costs."

3. Thereafter the petitioner claimed that when she was working in Maharashtra, a show cause notice was issued on 18th May, 2007, and has filed the present writ petition challenging the said show cause notice.

4. At the very outset, we may notice that it is not a show cause notice which has been served upon the petitioner but a memorandum dated 18th May, 2007 annexed thereto article of charges as Annexure-I,

statement of allegations in support of the article of charges as Annexure-II, list of documents to be relied upon as Annexure-III and list of witnesses as Annexure-IV. This contemplates an enquiry to be conducted against the petitioner in terms of regulation 12 of the Bank of India Officer Employees' (Conduct) Regulations, 1976. Even the preliminary hearing had started and the petitioner herself has annexed the said proceedings to the writ petition as Exhibit-K.

5. The prayer of the petitioner to set aside the show cause notice dated 18th May, 2007 is primarily based only on one contention that the episode is too old and the respondents had earlier taken into consideration these allegations and closed the matter. Hence, the Bank was estopped from taking any further action. It needs to be noticed that in terms of the article of charges and allegations annexed thereto, it appears that the Bank had conducted an enquiry and whereafter it found that the certificate had been obtained by misrepresentation. Article of charges clearly states that misrepresentation has been made that the petitioner belongs to Scheduled Tribe while her religion is Hindu, Jakkula, which was neither a Scheduled Caste nor a Scheduled Tribe and she had obtained appointment against a reserved vacancy. The Bank wants to investigate and deal with the petitioner in

accordance with law in this matter. The argument that the matter was already cleared by the Bank in the year 1983 is without any merit. In fact, it is a fresh enquiry based upon evaluation of new circumstances and, in any case, the contention raised by the petitioner had been rejected by the Andhra Pradesh High Court, vide its order dated 29th January, 2007. That order was not questioned by the petitioner and she accepted the said order. In the face of that order, the present writ petition, in any case, has no merit and, in fact, is an abuse of the process of law. The jurisdiction of the Court to interfere at the initial stages of the departmental proceedings is a very limited one. The regulation of the Bank permits that such an enquiry could be conducted and the petitioner cannot take shelter under the pre-decided issue. In the year 1993, on the own showing of the petitioner, no disciplinary action was contemplated against the petitioner. The show cause which was issued reserves the right of the Bank to take such other actions as may be considered necessary by the Bank.

6. In view of the above circumstances, we see no reason to interfere in the departmental proceedings at this stage. The writ petition is, therefore, dismissed, while leaving the parties to bear their own costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.